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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under article VII of the Convention

Addendum

PERU 1/

[Original: Spanish]
[15 July 1985]

Article 80 of the Constitution establishes, among other duties of the State, that of guaranteeing the full exercise of human rights. A special role in fulfilling this mandate is played by the judiciary; by the Office of the Government Attorney, which ensures the independence of judicial bodies and acts as the defender of the people before the administration; and by the National Elections Board, the Court of Constitutional Guarantees and the Commission on Human Rights of the Chamber of Deputies.

In order better to guarantee the full exercise of human rights, the legislative bodies have enacted a set of laws relating, for example, to suffrage for illiterate persons, measures to speed up the judicial process, the establishment of the Reprieve Assessment Commission, the Organizational Law on the Office of the Government Attorney the law re-establishing the Ministry of Justice and the Organizational Law on the Court of Constitutional Guarantees. In addition to these provisions, there is a new amparo and habeas corpus act; these laws are all designed to guarantee the full exercise of human rights. Parliament is also studying a number of bills and draft codes which must be brought into line with the new mandates of the Constitution currently in force in Peru.

Peru is a zealous defender of human rights and the legislative bodies are currently faced with the challenge either of giving the country new provisions to improve the implementation of the relevant provisions of the Constitution or of adapting already existing ones.

Peru fulfils the obligations it has contracted as a State Party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

1/ The initial report submitted by the Government of Peru (E/CN.4/1983/24/Add.12) was considered by the Group of Three at its 1983 session.

In accordance with the provisions contained in the Convention, we shall give further information on the following points, in keeping with the questionnaire submitted on the subject:

I. Information on any legislative, judicial, administrative or other measures taken to implement the following provisions of the Convention.

(a) That apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

It should be repeated that Peru considers apartheid to be a crime against humanity, as defined in the Convention, since, in accordance with the Peruvian Constitution, the Convention is part of national legislation with the same status as a constitutional norm and Peru therefore also regards apartheid as a serious violation of international law and of the principles embodied in the Charter of the United Nations.

In this connection, it should be pointed out that article 2 of the Peruvian Constitution states that every individual has the right "To equality before the law, without any discrimination based on sex, race, religion, opinion or language. Men and women have equal opportunities and responsibilities. The law recognizes that the rights of women are no fewer than those of men".

It should also be pointed out that, in Peru, it is prohibited to mention a person's race in any public document. Furthermore, article 1, paragraph (e) of the new Education Act of 10 May 1982 stipulates that "all forms of discrimination based on the sex, race, religious belief, political affiliation, language, occupation, marital status or social or economic status of a pupil or his parents are prohibited and shall be liable to punishment".

(b) Those organizations, institutions and individuals committing the crime of apartheid are considered to be criminals.

For the reasons indicated in the preceding paragraph, this aspect of the Convention forms part of the internal legal order of Peru.

(c) The obligation, laid down in article IV (b) of the Convention, to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

(d) The article of the Convention according to which international criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they: (a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the Convention; (b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

(e) The undertaking provided for in article XI of the Convention of granting extradition in accordance with their legislation and with the treaties in force, in the cases listed in article II of the Convention.

With regard to these points, it should be noted that, according to article 2 paragraph (2), of the Constitution, every individual has the right to equality before the law and penal provisions therefore apply to Peruvians and foreigners alike.

Article 109 of the Constitution establishes that "Extradition may be granted only by the executive power following a report by the Supreme Court. Political crimes or related actions cannot be the basis of extradition. Acts of terrorism, the assassination of an official and genocide are not considered as such. Extradition shall be denied if there is sufficient legal evidence to consider that extradition was requested for the purpose of persecuting or punishing an individual for reasons of race, religion, nationality or opinion".

(f) The obligation laid down in article IV (a) of the Convention to adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime.

Under our legal order, acts contrary to constitutional norms are null and void. This also applies to the provisions of the Convention, which, as stated above, have the status of constitutional norms.

In addition to the foregoing and in keeping with the internal legal order, as stated above, appeals may be made not only to local judicial authorities, but also to international courts or bodies under treaties to which Peru is a party, as stated in article 305 of the Constitution.

II. Information on any legislative, judicial, administrative or other measures taken to fulfil the obligation laid down in article VI of the Convention to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.

Peru is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, as well as to the International Convention on the Suppression and Punishment of the Crime of Apartheid. In keeping with its policy of full respect for fundamental human rights and freedoms without distinction as to race, sex or religious or political beliefs, Peru has recognized the competence of the Committee on the Elimination of Racial Discrimination and, consequently, has made the declaration provided for in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Article 88 of the Constitution provides that "The State rejects all forms of imperialism, colonialism, neo-colonialism and racial discrimination. It is united with the oppressed peoples of the world".

In line with its position of rejecting all forms of racism and racial discrimination, Peru has supported resolutions of the United Nations and other international bodies demanding the elimination of apartheid. It also supports the agreements relating to the Programme of Action against Apartheid.

As a member of the Special Committee against Apartheid, moreover, Peru participates actively in the work of that Special Committee for the purpose of bringing about the eradication of that system, which is contrary to tradition and is an affront to the dignity of all human beings. Peru has also participated in the two World Conferences to Combat Racism and Racial Discrimination.

It should also be pointed out that:

1. Peru maintains no political, cultural, sports or trade relations with the Government of South Africa; it thus has no agreements of any kind with that country.

2. The Government of Peru has made no investments in South Africa and there are no credit guarantees or permits for investments by private enterprises in South Africa.

3. There is no emigration of Peruvian nationals to South Africa.

4. Travel to South Africa for the purposes of tourism is neither promoted nor facilitated in Peru.

5. In view of its economic situation, Peru cannot give economic assistance to African countries, but it is constantly alive to the problems faced by African countries which are forced to maintain ties with South Africa.

6. Peru does not recognize the "bantustans" and makes no investment whatever in them.

7. Peru recognizes the efforts of the liberation and workers' movements of the black majority struggling for the realization of human rights in South Africa and Namibia. Such recognition is not tantamount to advocacy of the use of violence.

8. There are no obstacles in Peru to participation by trade unions in solidarity actions with workers struggling against apartheid.

(a) States parties should in so far as possible try to identify in their periodic reports individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II of the Convention, as well as persons against whom the State is a Party to the Convention.

(b) Where necessary, reports should contain the decisions of the competent court or tribunal of the State party relating to cases which come under article XI of the Convention.

No cases relating to these last two points have occurred in Peru. Article 22 of the Constitution provides for the systematic teaching of the Constitution and of human rights in civilian and military educational institutions at all levels.

In order to promote better understanding of the position which Peru maintains in international bodies with regard to the problem of apartheid, the text of the statement made by the Prime Minister and Minister for External Relations of Peru on 10 June 1985 at the extraordinary meeting of the Security Council on the problem of Namibia */ is attached herewith.

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*/ This statement is reproduced in Security Council document S/PV.2583, which is available to the members of the Group of Three in the secretariat files, in English, French and Spanish.